IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

MFA.No. 599 of 2000()

OP.MV.491/1995 of M.A.C.T. TIRUR DT.10.12.199
.....

APPELLANT: PETITIONER

K.VELAYUDHAN, S/O.THAMPI,
AGED 36 YEARS, KUTTIPPALAYIL HOUSE,
THALAKKAD AMSOM, B.P.ANGADI,
DESOM, TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.P.CHADRASEKHAR

RESPONDENTS: RESPONDENTS
----

1. **MANIKANDAN, S/O.SANKARA MENON**
ACHAYATH KALATHIL P.O., MUKKUTHALA
PONANI TALUK (DRIVER OF MOTOR CYCLE).

2. **P.V.NARAYANAN, S/O.P.V.SANKUNNI,**
PADINCHARE VEETTIL HOUSE,PIDAVANNOOR,
PONNANI TALUK (OWNER OF MOTOR CYCLE)

3. **THE UNITED INDIA INSURANCE CO.LTD.,**
BRNACH OFFICE, PONNANI (INSURER)

BY ADV. SRI.A.A.MOHAMMED NAZIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 599 of 2000

Dated this the 10th day of July, 2007

Judgment

Koshy, J.

Appellant, who was employed as an Extra-Departmental Postman, met with an accident, at the age of 31 due to the negligence of the first respondent driver of the vehicle owned by the second respondent. The above vehicle was, admittedly, insured by the third respondent insurance company. Tribunal found that the accident occurred due to the negligence of the first respondent driver. However, against a claim of Rs.4,41,000/-, only a total compensation of Rs.55,700/- was awarded with interest. Only quantum of compensation is disputed in this appeal.

2. As far as injuries are concerned, Ext.A2 is the accident register-cum-wound certificate issued from the Medical College Hospital, Kozhikode which shows that there were multiple abrasions over the face, limbs etc. Ext.A4 is the reference card issued from the Medical College Hospital. It shows that he was admitted there on 2.4.1995 and was discharged on 18.4.1995. There is also a

mention that on 8.4.1995 operation and frontal cranietony was conducted and evacuation of intra-cerebral haematoma was done under general anasthesia. Direction was made to attend the Neuro Surgery Department. The appellant had complained anosmia. There is another O.P. card which is seen within Ext.A4. For the sake of convenience it is marked as Ext.A4 (a). He had gone to the Medical College Hospital on 10.6.1995 and thereafter on 19.6.1995, 18.7.1995, 27.7.1995, 3.8.1995, 10.8.1995, 21.9.1995, 27.10.1995 and 18.12.1995. On 27.5.1995 it was noted that the petitioner had complained giddiness. Ext.A5 is another O.P. ticket which shows that he had gone to the hospital on 1.2.1996, 1.4.1996, 7.2.1996 and on six subsequent occasions also. It shows that it is a case of infra-cerebral haematoma evacuated. Ext.A16 is the disability certificate issued by Dr.M. Gangadharan, Assistant Professor of Surgery, Medical College Hospital, Kozhikode reads as follows:

> "This is to certify that Mr.Velayudhan K.,34 years, S/o. Thami, Kuttippalayil House, P.O. B.P.Angadi, Tirur, involved in an R.T.A. and admitted in the Medical College Hospital on 2.4.1995 I.P. No.13478 and discharged on 18.4.95. He sustained

> Fracture occipital bone (left side) contra coup brain injury was present. Discharged on 18.4.95.
>
> Today, I examined as per his request to assess the disability and found that there is depressed area on the left frontal region just above the left eye brow 8 x 7 c.m. Brain pulsation visible. Frontal bone lost in this area. Damaged the alfectory nerve present and leads to loss of smell. Partial loss of taste sensation in the half of the tongue. Recurrent attack of Epilepsy and giddiness present. He cannot walk and stand in the sun light for a long time as a result of fatigue. Loss of memory power present. As a result of part head injury complications he suffers 40% (Fourty percent) permanent disability."

Tribunal did not rely on the above certificate for two reasons. First reason is that Dr.Gangadharan was not a person who treated the claimant. Secondly, on seeing the claimant, the tribunal himself found that he is not a person with 40%disability and many of the defects mentioned in Ext.A16 certificate were absent. The tribunal only awarded Rs.15,000/- for disability and another Rs.15,000/- for disability for discomfort and loss of amenities. According to the tribunal, there is

no evidence to show that he lost his job and, therefore, compensation need not be calculated on a multiplier method. It is true that claimant did not lose his job and a multiplier method calculation may not be correct. But, at the same time, main contention of the petitioner is that he was only an E.D. postman. He will have to continue in the same post and he will not be able to get promotion as a regular postman which will affect his earnings. Admittedly, the claimant was on treatment for 11 months. The tribunal found that he was earning Rs.995/- per month on the basis of Ext.A7. Tribunal also found that he was under treatment for 11 months and he was on leave for 11 months, but, only Rs.7,700/- was granted for 11 months' leave. He was on leave for 11 months. Compensation payable for loss of earning will be Rs.10,945/-. After deducting the amount of Rs.7,700/- granted by the tribunal, balance payable will be Rs.3,245/- considering the nature of injuries, 11 months' long treatment undergone by him etc. Even though his salary as an E.D. postman was not reduced, it has affected his employment prospects and likelihood of getting another employment after retirement also was reduced. In these circumstances, we are of the opinion

that another Rs.10,000/- ought to have been awarded for disability and loss of earning power. Thus, claimant will be entitled to an additional amount of Rs.13,245/-. The above amount of Rs.13,245/- should be deposited by the third respondent insurance company with 8% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.599/2000

JUDGMENT

Dated:10th July, 2007